

AMENDED IN SENATE MAY 17, 1999

**SENATE BILL**

**No. 1090**

**Introduced by Senator ~~Leslie Schiff~~**

February 26, 1999

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~~An act to amend Section 2104 of the Probate Code, relating to conservatorships. An act to amend Sections 2340, 2341, and 2342 of, and to add Section 15604 to, the Probate Code, relating to trusts.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 1090, as amended, ~~Leslie Schiff. Conservatorships~~  
*Trusts: charitable corporations: private professional trustees.*

(1) Existing law provides that a nonprofit charitable corporation may be appointed as a guardian or conservator of a person or estate.

This bill would specify that a nonprofit charitable corporation ~~to~~ may also be appointed as a trustee of ~~a person or estate trust.~~

(2) Existing law prohibits the court from appointing a private professional conservator or private professional guardian unless specified information is filed with the county clerk under penalty of perjury.

This bill would prohibit the court from appointing a private professional trustee, as defined, unless specified information is filed with the county clerk under penalty of perjury. By extending the class of persons required to file statements under penalty of perjury, this bill would impose a state-mandated local program.

(3) *The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

*This bill would provide that no reimbursement is required by this act for a specified reason.*

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~—yes.  
State-mandated local program: ~~no~~—yes.

*The people of the State of California do enact as follows:*

1     ~~SECTION 1. Section 2104 of the Probate Code is~~  
2     SECTION 1. Section 15604 is added to the Probate  
3     Code, to read:  
4     15604. (a) Notwithstanding any other provision of  
5     law, a nonprofit charitable corporation may be appointed  
6     as trustee of a trust created pursuant to this division, if all  
7     of the following conditions are met:  
8         (1) The corporation is incorporated in this state.  
9         (2) The articles of incorporation specifically authorize  
10     the corporation to accept appointments as trustee.  
11     (3) For the three years prior to the filing of a petition  
12     under this section, the nonprofit charitable corporation  
13     has been exempt from payment of income taxes  
14     organization pursuant to Section 501(c)(3) of the  
15     Internal Revenue Code and has served as a professional  
16     conservator in the state.  
17     (4) The settlor or an existing trustee consents to the  
18     appointment of the nonprofit corporation as trustee or  
19     successor trustee, either in the petition or in a writing  
20     signed either before or after the petition is filed.  
21     (5) The court determines the trust to be in the best  
22     interest of the settlor.  
23     (6) The court determines that the appointment of the  
24     nonprofit corporation as trustee is in the best interest of  
25     the settlor and the trust estate.  
26     (b) A petition for appointment of a nonprofit  
27     corporation as trustee under this section may be filed by  
28     any of the following:

1     (1) *The trustor or settlor or the spouse of the trustor or*  
2 *settlor.*

3     (2) *The nonprofit charitable corporation.*

4     (3) *An existing trustee.*

5     (c) *The petition shall include in the caption the name*  
6 *of a responsible corporate officer who shall act for the*  
7 *corporation for purposes of this section. If, for any reason,*  
8 *the officer so named ceases to act as the responsible*  
9 *corporate officer for purposes of this section, the*  
10 *corporation shall file with the court a notice containing*  
11 *(1) the name of the successor responsible corporate*  
12 *officer and (2) the date the successor becomes the*  
13 *responsible corporate officer.*

14     (d) *The petition shall request that a trustee be*  
15 *appointed for the estate, shall specify the name, address,*  
16 *and telephone number of the proposed trustee and the*  
17 *name, address, and telephone number of the settlor or*  
18 *proposed settlor, and state the reasons why the*  
19 *appointment of the trustee is necessary.*

20     (e) *The petition shall set forth, so far as they are known*  
21 *to the petitioner, the names and addresses of all persons*  
22 *entitled to notice of a conservatorship petition, as*  
23 *specified in subdivision (b) of Section 1821.*

24     (f) *Notice of the hearing on the petition shall be given*  
25 *in the same manner as provided in Sections 1822 and 1824.*

26     (g) *The trustee appointed by the court pursuant to this*  
27 *section shall do all of the following:*

28     (1) *File the required bond for the benefit of the trust*  
29 *estate in the same manner provided for conservators of*  
30 *the estate as set forth in Section 2320. This bond may not*  
31 *be waived, but the court may, in its discretion, permit the*  
32 *filing of a bond in an amount less than would otherwise*  
33 *be required under Section 2320.*

34     (2) *Comply with the requirements for registration and*  
35 *filing of annual statements pursuant to Article 4*  
36 *(commencing with Section 2340) of Chapter 4 of Part 4*  
37 *of Division 4.*

38     (3) *File with the court inventories and appraisals of*  
39 *the trust estate and present its accounts of the trust estate*  
40 *in the manner provided for conservators of the estate set*

1 forth in Chapter 7 (commencing with Section 2600) of  
2 Part 4 of Division 4.

3 (4) Be reimbursed for expenses and compensated as  
4 trustee in the manner provided for conservators of the  
5 estate as described in Chapter 8 (commencing with  
6 Section 2640) of Part 4 of Division 4. However,  
7 compensation as trustee appointed under this section  
8 shall be allowed only for services actually rendered and  
9 shall not be based on the value of the estate.

10 (5) Be represented by counsel in all proceedings  
11 before the court. Any fee allowed for an attorney for the  
12 nonprofit charitable corporation shall be for services  
13 actually rendered and shall not be based on the value of  
14 the estate.

15 (h) The trustee appointed by the court under this  
16 section may be removed by the court, or may resign in  
17 accordance with Chapter 9 (commencing with Section  
18 2650) of Part 4 of Division 4. If the nonprofit charitable  
19 corporation resigns or is removed by the court, the trustor  
20 or settlor may, appoint another person as successor  
21 trustee, or another nonprofit charitable corporation as  
22 trustee under this section.

23 (i) The trustee appointed by the court under this  
24 section is bound by the trust instrument created by the  
25 settlor, and shall be subject to the duties and  
26 responsibilities of a trustee as provided in this code.

27 SEC. 2. Section 2340 of the Probate Code is amended  
28 to read:

29 2340. (a) No superior court may appoint a private  
30 professional conservator or private professional guardian,  
31 or permit any person to continue to serve as a private  
32 professional conservator or private professional guardian,  
33 pursuant to Chapter 5 (commencing with Section 2350)  
34 or Chapter 6 (commencing with Section 2400) unless the  
35 conservator or guardian has filed the information  
36 required by Sections 2342 and 2343 with the county clerk  
37 in each county where a petition for appointment has been  
38 filed.

39 (b) No superior court may appoint a private  
40 professional trustee unless the trustee has filed the

1 *information required by Sections 2342 and 2343 with the*  
2 *county clerk in each county where a petition for*  
3 *appointment has been filed.*

4 *SEC. 3. Section 2341 of the Probate Code is amended*  
5 *to read:*

6 2341. (a) As used in this article, “private professional  
7 conservator” means a person or entity appointed as  
8 conservator of the person or estate, or both, of two or  
9 more conservatees at the same time who are not related  
10 to the conservator by blood or marriage, except a bank or  
11 other entity authorized to conduct the business of a trust  
12 company, or any public officer or public agency including  
13 the public guardian, public conservator, or other agency  
14 of the State of California. In the case of an entity, all  
15 natural persons who are authorized by the entity to  
16 perform the functions of a conservator shall comply with  
17 this article. The court may, at its discretion, require any  
18 person who is the conservator for only one conservatee  
19 not related to the conservator by blood or marriage to  
20 comply with this article, and in that case, references in  
21 this article to a “private professional conservator”  
22 includes those persons.

23 (b) As used in this article, “private professional  
24 guardian” means a person or entity appointed as guardian  
25 of the person or estate, or both, of two or more wards at  
26 the same time who are not related to the guardian by  
27 blood or marriage, except a bank or other entity  
28 authorized to conduct the business of a trust company, or  
29 any public officer or public agency including the public  
30 guardian, public conservator, or other agency of the State  
31 of California. In the case of an entity, all natural persons  
32 who are authorized by the entity to perform the functions  
33 of a guardian shall comply with this article. The court  
34 may, at its discretion, require any person who is the  
35 guardian for only one ward not related to the guardian by  
36 blood or marriage to comply with this article, and in that  
37 case, references in this article to a “private professional  
38 guardian” includes those persons.

1 (c) As used in this article, “private professional  
2 trustee” means a nonprofit charitable corporation  
3 appointed as trustee pursuant to Section 15604.

4 SEC. 4. Section 2342 of the Probate Code is amended  
5 to read:

6 2342. (a) All private professional conservators—~~or~~,  
7 private professional guardians, and private professional  
8 trustees shall file annually with the county clerk a  
9 statement, under penalty of perjury, containing the  
10 following information:

11 (1) His or her educational background and  
12 professional experience.

13 (2) At least three professional references.

14 (3) The names of the conservator’s or guardian’s  
15 current conservatees or the trusts currently  
16 administered by the trustee.

17 (4) The aggregate dollar value of all assets currently  
18 under the conservator’s—~~or~~, guardian’s, or trustee’s  
19 supervision.

20 (5) The conservator’s—~~or~~, guardian’s, or trustee’s  
21 addresses and telephone numbers for his or her place of  
22 business and place of residence.

23 (6) Whether the conservator—~~or~~, guardian, or trustee  
24 has ever been removed for cause as conservator or  
25 guardian or trustee or has resigned as conservator or  
26 guardian or trustee in a specific case, the circumstances  
27 causing that removal or resignation, and the case names,  
28 court locations, and case numbers.

29 (7) The case names, court locations, and case numbers  
30 of all conservatorship—~~or~~, guardianship, or trust cases  
31 which are closed for which the private professional  
32 conservator or private professional guardian or trustee  
33 served as the conservator or private professional  
34 guardian or trustee.

35 (b) Upon filing of a petition for appointment, a private  
36 professional conservator—~~or~~, private professional  
37 guardian, and private professional trustee shall state that  
38 he or she is a private professional conservator or private  
39 professional guardian or private professional trustee, and

1 that the information required by this section is on file with  
2 the county clerk.

3 (c) The county clerk shall order a background  
4 fingerprint check from the Department of Justice and  
5 may request a background fingerprint check from the  
6 Federal Bureau of Investigation on each private  
7 professional conservator—~~or~~, private professional  
8 guardian, *or private professional trustee*. The  
9 background check shall include a record of all arrests  
10 resulting in conviction and all arrests for which final  
11 disposition is pending. The Department of Justice shall  
12 retain these fingerprints in its files and shall provide any  
13 subsequent arrest information to the county clerk  
14 pursuant to Section 11105.2 of the Penal Code until  
15 notified by the county clerk that the person is no longer  
16 serving in the capacity of a private professional  
17 conservator or private professional guardian *or private*  
18 *professional trustee*. The superior court shall review the  
19 background fingerprint check prior to the appointment  
20 of a private professional conservator or private  
21 professional guardian *or private professional trustee*. The  
22 court shall review annual updates to the criminal  
23 background check on persons currently serving in the  
24 capacity of a private professional conservator or private  
25 professional guardian under the court's jurisdiction. The  
26 background fingerprint check may be dispensed with by  
27 the court if the petitioner was appointed as a private  
28 professional conservator or private professional guardian  
29 *or private professional trustee*, or served in the capacity  
30 of a private professional conservator or private  
31 professional guardian *or private professional trustee*,  
32 during the previous year and a background fingerprint  
33 check was previously made.

34 (d) The information required by this section shall be  
35 made available to the court for any purpose, including the  
36 determination of the appropriateness of appointing or  
37 continuing the appointment of, or removing, the  
38 conservator or guardian *or trustee*, but shall otherwise be  
39 kept confidential.



(e) This section applies to all private professional conservators—~~or~~, private professional guardians, and private professional trustees regardless of the date of appointment.

*SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.*

~~amended to read:~~

~~2104. (a) A nonprofit charitable corporation may be appointed as a guardian or conservator or trustee of the person or estate, or both, if all of the following requirements are met:~~

~~(1) The corporation is incorporated in this state.~~

~~(2) The articles of incorporation specifically authorize the corporation to accept appointments as guardian or conservator, as the case may be.~~

~~(3) The corporation has been providing, at the time of appointment, care, counseling, or financial assistance to the proposed ward or conservatee under the supervision of a registered social worker certified by the Board of Behavioral Science Examiners of this state.~~

~~(b) The petition for appointment of a nonprofit charitable corporation described in this section as a guardian or conservator or trustee shall include in the caption the name of a responsible corporate officer who shall act for the corporation for the purposes of this division. If, for any reason, the officer so named ceases to act as the responsible corporate officer for the purposes of this division, the corporation shall file with the court a notice containing (1) the name of the successor responsible corporate officer and (2) the date the successor becomes the responsible corporate officer.~~



~~(c) If a nonprofit charitable corporation described in this section is appointed as a guardian or conservator or trustee:~~

~~(1) The corporation's compensation as guardian or conservator or trustee shall be allowed only for services actually rendered and shall not be based on the value of the estate.~~

~~(2) Any fee allowed for an attorney for the corporation shall be for services actually rendered and shall not be based on the value of the estate.~~

